IN THE HIGH COURT OF UTT ARANCHAL AT NAINITAL

Writ Petition No. 793 of 2002 (S/B)

Ram Chandra & another. …… Petitioners

Versus

State of Uttaranchal,
Through Chief Secretary,
Govt. of Uttaranchal, Dehradun & others. …… Respondents

Mr. Sanjay Kaushik, learned counsel for the petitioners.
Learned Standing counsel for the State.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

This writ petition has been filed by the petitioners seeking a writ of certiorari quashing the Government Order dated 29.8.2001 issued by the Government of Uttaranchal, which is contained in Annexure 8 to the writ petition so far as it pertains to the post of Junior Engineer (Civil) (Technical) in Public Works Department, Government of Uttaranchal. A further prayer has been sought to command the respondents to permit the petitioners to function as Junior Engineer (Technical) in Public Works Department and to pay them regular monthly salary.

U.P. Public Service Commission, Allahabad issued an advertisement bearing No. 3/98-99, which was published in the newspaper Rashtriya Sahara dated 1.7.1998 for inviting applications for recruitment to the post of Junior Engineer (Civil) and Junior Engineer (Technical) in the Irrigation Department, Minor Irrigation Department and the Public Works Department of the Government of U.P. The detail of vacancies specified in the advertisement included the vacancies of Junior Engineer (Civil) and (Technical) for the hill cadre of Public Works Department of the then existing State of U.P. Petitioners being fully qualified and eligible, applied in pursuance of the said advertisement under the category of Other Backward Class.

The petitioners participated in the screening test on 18.10.1998 and qualified the same. Thereafter interviews were held by the Commission between 7.7.1999 to 22.12.1999. At the time of interview, the candidates were required to submit their preference from amongst the two departments of Public Works Department and Minor Irrigation Department. Simultaneously, the candidates were also required to express their preference for the hill sub-cadre or the plain cadre of the department. Both the petitioners submitted their first preference for Public Works Department of hill sub-cadre. The final result of the selection was published on 6.1.2000, wherein the petitioners have been shown selected for the post of Junior Engineer (Technical) for the hill cadre of Public Works Department. The U.P. Public Service Commission had published the select list and forwarded the same to the State Government of U.P. both with regard to the plains cadre as well as the hill cadre of service before the appointed day. After coming into force of the U.P. Reorganisation Act, 9th November, 2000 was fixed as the appointed day, on which the Act same into force and the State of Uttaranchal came into existence. After the appointed day, the State of Uttar Pradesh sent recommendations of the Public Service Commission to the State of Uttaranchal for appointment under the Hill Sub-Cadre Rules, 1992 along with the entire papers received from the Commission.

After the receipt of the aforesaid recommendations, the State of Uttaranchal took a cabinet decision not to give appointment to the candidates on the posts for which recommendations were made by the Public Service Commission, Uttar Pradesh. The said decision was issued by the Government Order dated 29.8.2001. Because of the aforesaid decision, the petitioners could not be issued their appointment letters. Therefore, the present writ petition has been filed.

We have heard learned counsel for the parties and gone through the records.

The similar controversy has been decided by the Hon'ble Apex Court in the case of State of Uttaranchal & others Vs Sidharth Srivastava & others reported in 2003 AIR SCW 3019, whereby the judgment of this High Court, by which the State of Uttaranchal was directed to proceed and complete the formalities for giving appointment to the candidates in accordance with relevant service rules, has been set aside. The relevant observations of the Hon'ble Apex Court are quoted below:

> *"The High Court misread the Government order dated 29.8.2001and drew wrong inference in saying that the Government of Uttaranchal denied acceptance of the recommendations but did not say that no appointment shall be given on the basis of the recommendations of UPPSC. If the Government of Uttaranchal has denied to accept the recommendations of UPPSC, essentially it follows that no appointment could be given. This apart in the very order in paragraph 2 it is specifically stated that "therefore, in this regard after thorough consideration it has been decided that the candidates recommended by the UPPSC may not be appointed in various Departments of the Government of Uttaranchal." Thus, the reason given by the High Court that the Government of Uttaranchal though denied to accept the recommendations of UPPSC but did not deny to give appointment and as such the said Government order could be ignored, does not stand to reason and it is untenable.*
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> *The other reason given to ignore the Government Order is that the same was issued after the appointed day. Merely because the said Government order was issued after the appointed day, it could not be simply ignored without considering the legality and validity of that order, in the light of the relevant constitutional provisions and provisions of the Act. The order exists unless it is quashed or it ceased to operate for any other reason.*
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> *There is no difficulty in accepting the principles laid down in the cases of Shankarasan Dash and Asha Kaul (Mrs.) (supra). But the High Court failed to apply those principles correctly to the facts of the present cases. As stated by the High Court it is settled law that a candidate whose name is included in the select list does not get indefeasible right for appointment on the basis of the recommendations made by the Public*

Service Commission, but at the same time the Government has no absolute right to reject the recommendations and refuse appointment to the candidates recommended without a valid and reasonable ground for not accepting the recommendations of UPPSC. The High Court found that the reasons given in the Government Order dated 29.8.2001 were not valid reasons for not accepting the recommendations of UPPSC. While discussing whether the recommendations of UPPSC are binding on the State of Uttaranchal, keeping in view the constitutional provisions and in particular S. 78(4) of the act, we have already expressed above that the recommendations of the UPPSC are not binding to compel the State of Uttaranchal to give appointments to the candidates recommended by the UPPSC. It is not possible to accept the view of the High Court that the reasons given in Government order dated 29.8.2001 are not valid. On the other hand, we find that the reasons given in the said order are valid and reasonable. At any rate, it cannot be said that the State of Uttaranchal arbitrarily or whimsically refused to give appointments to the selected candidates.

The interpretation placed by the High Court on S. 78 of the Act is also wrong. Merely because the recommendations received by the erstwhile State of Uttar Pradesh had been sent to State of Uttaranchal and they were not reversed by the Governor for being placed with the reasons before the Assembly of State of Uttar Pradesh under S. 78 of the Act, it cannot be held that the recommendations made by the UPPS were binding on Government of Uttaranchal. In this regard, we have already made the legal position clear. Hence it is unnecessary to deal with the same any further. In our view, looking to the reasons recorded by the High Court in the impugned judgment, which are neither tenable nor acceptance, the impugned judgment cannot be allowed to stand.

It was also urged in the alternative that the State of Uttar Pradesh may be directed to give appointments to the non-official respondents. This aspect was neither raised before the High Court nor it was considered. Hence, we do not wish to deal with the same. All that we can say is that this order shall not come in the way of the State of Uttar Pradesh, if so advised, to consider the claims of the non-official respondents for appointments based on the selection made by UPPSC. Having regard to the peculiar situation in which the non-official respondents are placed, we would like to say that in case the non-official respondents apply as and when the applications are invited for selection either by UPPSC or by the Uttaranchal State Public Service commission in future within a period of three years, the UPPSC or the Uttaranchal State Public Service Commission shall consider them for selection subject to their

satisfying all other eligibility requirements but relaxing the upper age limit."

In view of the aforesaid judgment of the Hon'ble Apex Court, this writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt. 07.07.2004
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